

THE OFFICE OF REGULATORY STAFF

DIRECT TESTIMONY

OF

CHRISTOPHER J. ROZYCKI

SEPTEMBER 28, 2011



DOCKET NO. 2011-294-C

**Application of Budget PrePay, Incorporated
d/b/a/ Budget Phone for Designation as a Non-
Rural Wireless Eligible Telecommunications
Carrier**

DIRECT TESTIMONY OF
CHRISTOPHER J. ROZYCKI
FOR
THE OFFICE OF REGULATORY STAFF

IN RE: APPLICATION OF BUDGET PREPAY, INC. D/B/A BUDGET PHONE FOR
DESIGNATION AS A NON-RURAL WIRELESS ELIGIBLE
TELECOMMUNICATIONS CARRIER

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION.

A. My name is Christopher J. Rozycki and my business address is 1401 Main Street, Suite 900, Columbia, South Carolina 29201. I am employed by the State of South Carolina Office of Regulatory Staff (“ORS”) as a Program Manager in the Telecommunications Department.

Q. PLEASE STATE YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE.

A. I have over thirty (30) years of experience. I have more than twenty (20) years in telecommunications business and regulation and nearly ten (10) years in the regulation of energy industries.

In the telecommunications industry I worked for a major interexchange company, AT&T (before it remerged with Southwestern Bell Telephone Company (“SBC”) and BellSouth Telecommunications, Inc.), two competitive local exchange companies, a competitive broadband/cable TV company, and a telecommunications consulting firm. As my experience grew, I took on roles of increasing responsibility and leadership, often

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1401 Main Street, Suite 900
Columbia, SC 29201

1 crafting the regulatory policy for my company and presenting that position in meetings,
2 presentations, formal comments, and testimony.

3 My testimony and advocacy covered issues involving finance, economics, rate-of-
4 return, competitive entry, intercarrier compensation and access. I have also been
5 involved with the startup, development, and funding of telecommunications companies
6 and other businesses.

7 Additionally, I have worked for the federal government in an energy regulatory
8 organization (U.S. Department of Energy), and as a public utility consumer advocate for
9 a county government in Virginia.

10 I hold a master's degree in Economics from George Mason University in Fairfax,
11 Virginia and a bachelor's degree in Economics from Georgetown University in
12 Washington, DC.

13 **Q. WHAT ARE YOUR RESPONSIBILITIES AT THE OFFICE OF REGULATORY**
14 **STAFF?**

15 A. As Telecommunications Program Manager, I am responsible for all
16 telecommunications activities of ORS including the certification of new
17 telecommunications entrants, regulation and oversight of existing telecommunications
18 companies, management of the state universal service and Interim LEC funds, and
19 administration of the Lifeline Program.

20 **Q. HAVE YOU PROVIDED TESTIMONY IN OTHER REGULATORY**
21 **PROCEEDINGS?**

A. Yes. I have provided testimony on a variety of issues in Alabama, Delaware, Florida, Georgia, Louisiana, Mississippi, New York, North Carolina, Pennsylvania, South Carolina, Tennessee, Vermont, and Virginia.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

A. The purpose of my testimony is to present the results of ORS's review of Budget PrePay, Inc.'s ("Budget" or "Company") Application for an additional designation as a wireless Eligible Telecommunications Carrier ("ETC") within the State of South Carolina.

Q. ARE THE FINDINGS OF YOUR REVIEW CONTAINED IN THIS TESTIMONY?

A. Yes, my testimony provides ORS's findings and recommendations.

Q. EXPLAIN HOW YOU COMPILED THE INFORMATION FOR YOUR TESTIMONY.

A. I compared the information provided in Budget's application, direct testimony, and responses to data requests with the requirements contained in Public Service Commission of South Carolina ("Commission" or "PSC") regulation 103-690, which sets forth the requirements for ETC designation.

Q. PROVIDE A BRIEF SUMMARY OF BUDGET'S APPLICATION FOR ETC DESIGNATION.

A. Budget is a Competitive Local Exchange Carrier ("CLEC") and was designated by this Commission as a **wireline ETC** in South Carolina in 2010.¹ In this instant application, Budget is requesting an additional designation as a **wireless ETC** in South

¹ Order No. 2010-25, Docket No. 2009-276-C

1 Carolina. Budget is seeking wireless ETC designation in the areas served by AT&T
2 South Carolina and Frontier Communications of the Carolinas, Inc. ("Frontier"), solely
3 for the purpose of obtaining Federal Universal Service Fund low-income support. The
4 company's Application for wireless ETC designation was filed with the Commission on
5 July 21, 2011.

6 **Q. PROVIDE A SUMMARY OF ORS'S ANALYSIS AND FINDINGS WITH**
7 **RESPECT TO BUDGET'S APPLICATION FOR WIRELESS ETC**
8 **DESIGNATION.**

9 A. ORS reviewed Budget's application focusing on three (3) particular areas:

- 10 1. Compliance with 26 S.C. Code Regs. Ann. 103-690;
11 2. Provision of wireless services in South Carolina; and
12 3. Public Interest determination.

13 My testimony will summarize ORS's analysis of the Budget application and
14 demonstrate why Budget fails to meet the minimum requirements for designation as a
15 wireless ETC in South Carolina.

16 **Compliance with 26 S.C. Code Regs. Ann. 103-690**

17 **Q. IS BUDGET'S APPLICATION IN COMPLIANCE WITH THE COMMISSION**
18 **REQUIREMENTS FOR WIRELESS ETC DESIGNATION?**

19 A. No. The following regulations require a demonstration by Budget.

- 20 A. 103-690C.(a)(1)(C)(2) Demonstrate its ability to remain functional in
21 emergency situations, including a demonstration that it has a reasonable
22 amount of back-up power to ensure functionality without an external power
23 source, its ability to reroute traffic around damaged facilities, and its
24 capability of managing traffic spikes resulting from emergency situations. The
25 commission shall determine on a case-by-case basis whether a carrier has
26 demonstrated its ability to remain functional in emergency situations;
27

1 B. 103-690C.(a)(1)(C)(6) Certify by affidavit signed by an officer of the company
2 that it does offer or will offer the services that are supported by the federal
3 universal service support mechanisms by using its own facilities or a
4 combination of its own facilities and resale of another carrier's services.
5

6 With regard to Regulation 103-690C.(a)(1)(C)(2), Budget states in its application
7 that:
8

9 Because Budget's services will be provided, at least in part through resale, they
10 will be as reliable and provide all of the back-ups and contingency plans of its
11 underlying wireless service provider, which include backup battery power at cell
12 sites to ensure functionality in emergency situations. Additionally, Budget will
13 have the ability to provide for the rerouting of traffic around damaged facilities,
14 and management of traffic spikes resulting from emergency situations through its
15 wireless service provider and its own facilities.²
16

17 This statement fails to demonstrate how Budget will remain functional in
18 emergency situations. The statement suggests that Budget's service provider, Verizon
19 and/or Sprint, has extended its ability to remain functional in emergency situations to
20 Budget; however, Budget has provided ORS with no evidence to support this claim. ORS
21 requested Budget provide copies of contracts with supporting entities, which would
22 include Verizon/Sprint and others supporting the Company, but Budget failed to provide
23 the requested information. These contracts should address how Verizon/Sprint would
24 protect Budget in the event of an "emergency situation," since this is required under
25 federal law at 47 C.F.R § 54.202(a)(2), and South Carolina law at 26 S.C. Code Ann.
26 Regs. 103-690 C(a)(2). Additionally, Budget has failed to indicate how its own facilities
27 are protected in emergency situations. Without a documented "Emergency Plan" and
28 without some sort of coordination plan (since all of Budget's wireless traffic will be
29 handled by other carriers) ORS cannot verify if such rerouting would occur.

² Application of Budget Pre-Pay, Inc. for Designation as a Non-Rural Wireless Eligible Telecommunications Carrier, page 10.

1 With regard to Regulation 103-690C.(a)(1)(C)(6), Budget has provided an
2 affidavit, but ORS has been unable to verify any details associated with Budget's
3 facilities located in Shreveport, Louisiana and Dallas, Texas. Budget has failed to
4 provide evidence of "its own facilities and switches" in Shreveport and Dallas. ORS
5 requested Budget provide information to identify the type of facilities owned by Budget,
6 the function of those facilities, and how South Carolina wireless Lifeline customers
7 would be supported and benefited by these facilities located in Louisiana and Texas.

8 **Q. ARE THERE ANY OTHER DEFICIENCIES IN THE BUDGET APPLICATION**
9 **FOR WIRELESS ETC DESIGNATION?**

10 **A.** Yes. In its application, Budget states that it will "provide each of these required
11 services, identified in 47 C.F.R. § 54.101, throughout its designated service area utilizing
12 a combination of its own facilities and resale of wireless services." ORS finds this
13 statement to be misleading. No Budget facilities will be employed to provide the basic
14 wireless service that Budget will resell. Budget's, as yet unverified facilities in
15 Shreveport and Dallas, will only be used to support ancillary services such as Directory
16 Assistance and Operator Services, and only if customers choose to use the service offered
17 by Budget.

18 Budget has no wireless facilities in South Carolina or anywhere. It is a pure
19 wireless reseller. The South Carolina Public Service Commission does not regulate
20 wireless service or carriers.

Provision of Wireless Services in South Carolina

Q. DOES BUDGET HAVE FOREBEARANCE FROM THE FEDERAL COMMUNICATIONS COMMISSION (“FCC”) FROM THE FACILITIES REQUIREMENT?

A. No, it appears that Budget has not requested nor received forbearance from the FCC.

Q. HAS BUDGET REQUESTED WIRELESS ETC DESIGNATION FROM THE FCC FOR ANY OF THOSE STATES THAT DEFER TO THE FCC?

A. Yes. Budget has requested approval in nine (9) states and the District of Columbia.³ The FCC has not granted ETC to Budget as of the date of this testimony.

Q. DID BUDGET PROVIDE EVIDENCE IT WILL OFFER THE SUPPORTED SERVICES USING ITS OWN FACILITIES OR THROUGH A COMBINATION OF ITS OWN FACILITIES AND THE RESOLD SERVICES OF ANOTHER CARRIER AND HOW IT WILL ROUTE TRAFFIC FOR SOUTH CAROLINA CUSTOMERS OVER THOSE FACILITIES?

A. No. ORS requested call diagrams to identify how wireless calls might be routed through Budget facilities, but Budget has not responded. From the limited information provided to ORS by Budget, it appears a South Carolina Lifeline customer using Budget wireless service may never make a call that touches any Budget facilities. Calls from Budget Lifeline customers to individuals or businesses in South Carolina will be handled

³ WC Docket No. 09-197, Budget PrePay filed nine separate petitions on April 18, 2011, in the following states Alabama, Connecticut, Delaware, New Hampshire, New York, North Carolina, Tennessee, Virginia, the District of Columbia, and another on August 1, 2011 in Florida

1 on the calling end by the Sprint/Verizon network, while the receiving end will be handled
2 by the receiving party's phone or wireless company network. These intrastate calls will
3 never touch Budget facilities. For calls to individuals or businesses outside South
4 Carolina the same network scenario exists, with calls never touching Budget facilities.
5 For customer-dialed 411 calls, it appears to ORS, that the calls will traverse the
6 Sprint/Verizon network to Sprint/Verizon's preselected Directory Assistance provider.
7 Budget has provided no call diagrams that demonstrate otherwise.

8 Budget's Application indicates it will resell the wireless service of
9 Sprint/Verizon; however, ORS could not verify this arrangement as Budget did not
10 provide the requested contract with Sprint or Verizon. It appears to ORS that Budget has
11 neither wireless facilities nor a contract to provide resold wireless services. Budget
12 provided ORS information indicating that it will meet the facilities-based requirement for
13 its wireless services by incorporating a switch located in Shreveport or Dallas to provide
14 Directory Assistance. Budget has not provided ORS any evidence to confirm the
15 existence of a switch and its function.

16 ORS requested specific information related to Budget's facilities, but that
17 information has not been provided. ORS also reviewed Budget's annual reports. The
18 Annual Report contains both income statement and balance sheet information; however
19 Budget provided nothing in these reports to indicate it has facilities in South Carolina or
20 has facilities allocated to its South Carolina business.

21 In summary, all evidence ORS has been able to review indicates Budget is a
22 wireless reseller.

**Q. CAN THE SOUTH CAROLINA PUBLIC SERVICE COMMISSION APPROVE A
REQUEST FOR WIRELESS ETC DESIGNATION ABSENT FCC
FORBEARANCE?**

A. While South Carolina does not have jurisdiction over wireless services, interstate traffic, or facilities located in other states, the Commission may approve low-income ETC designation if Budget first obtains facilities-based forbearance from the FCC. Based on Budget's Application, there is no way for the ORS or the Commission to verify that the facilities claimed to be used by Budget will, in fact, ever be used. The FCC will, in many instances, grant a wireless reseller like Budget forbearance from the facilities requirement. This approach eliminates the very difficult process of verifying the use of facilities.

**Q. IF THE COMMISSION WERE TO APPROVE BUDGET'S APPLICATION FOR
WIRELESS ETC DESIGNATION, SHOULD BUDGET BE ALLOWED TO SEEK
FEDERAL LINK-UP SUPPORT?**

A. No. The South Carolina Code of Regulations 103-690.1 E(b)(1) states, "ETCs...shall provide a reduction of the customary charge for connecting telecommunications service for a single line at the consumer's principal place of residence." Budget, a wireless reseller, will not connect telecommunications service at the consumer's principal place of residence, and is not entitled to Link-up support. The FCC has denied all wireless resellers access to Link-up support. Budget is no exception. If the Commission should approve Budget's application, it should deny Budget access to Link-up support.

1 **Q. IN YOUR OPINION, IS ONE CALL BY ONE CUSTOMER TRANSPORTED**
2 **THROUGH BUDGET’S FACILITY IN LOUISIANA OR TEXAS ENOUGH TO**
3 **QUALIFY THE SERVICE AS FACILITIES-BASED?**

4 A. No it is not. The FCC identified the requirements for a facilities-based ETC
5 designation in a forbearance docket involving several wireless resellers like Budget, “To
6 become an ETC, a common carrier must offer the services supported by the federal
7 universal service support mechanisms ‘either using its own facilities or a combination of
8 its own facilities and resale of another carrier’s services’ to each customer in its
9 designated service area.” (FCC Order No. 10-134, at page 2)(emphasis added). Budget
10 does not offer each customer supported services over its own facilities or a combination
11 of its own facilities and the resale of another carrier’s services.

12 **Q. IS BUDGET’S APPROACH OF REQUESTING WIRELESS ETC DESIGNATION**
13 **ON A FACILITIES BASIS DIFFICULT TO MONITOR?**

14 A. Yes. Because Budget will be using facilities located outside South Carolina, and
15 because those facilities are not part of the basic local service wireless offering, ORS and
16 the Commission have no way of verifying Budget is actually using those facilities to
17 provide service in South Carolina. Unlike a facilities-based wireline ETC providing
18 service using Incumbent Local Exchange Carrier (“ILEC”) unbundled network elements
19 (“UNEs”) where ORS can periodically verify facilities usage, ORS has does not have the
20 ability to verify that Budget’s wireless Directory Assistance calls are being directed
21 through its switches in Dallas and Shreveport. In addition, once this Commission
22 designates a carrier as an ETC for Lifeline only purposes, there is no FCC requirement
23 for the ETC to recertify that it remains a facilities-based carrier.

Public Interest Determination

Q. COMMISSION REGULATION 103-690 ESTABLISHES A PUBLIC INTEREST STANDARD AND REQUIRES THE COMMISSION TO CONSIDER TWO AREAS. CAN YOU ADDRESS THESE AREAS?

A. Yes. Regulation 103-690.C (b) requires the Commission to consider: (1) the benefits of increased consumer choice; and (2) the unique advantages and disadvantages of the applicant's service offering. With regard to consumer choice, when the Commission certifies a low-income ETC the low-income consumer's choices increase and competing wireless carriers are encouraged to offer better pricing, service, and terms.

 There are two wireless ETCs, and a third is pending, currently offering Lifeline whose basic Lifeline pricing is substantially better for the consumer than Budget's. SafeLink and Assurance Wireless offer 250 free minutes, in the same geographic areas, compared to Budget's service offering of only 68 free minutes. If the Commission were to approve Budget as a wireless ETC, the customer would have another choice for Lifeline service, but the low-income customers who choose Budget will pay more for basic wireless service.

 Based on ORS's analysis of the unique advantages and disadvantages, Budget offers no unique advantages to the South Carolina Lifeline consumer. Other competitive wireless ETCs offer similar services with more free minutes and lower prices in South Carolina.

Q. DOES ORS RECOMMEND APPROVAL OF BUDGET'S APPLICATION FOR WIRELESS ETC DESIGNATION?

1 A. No. Budget is a wireless reseller. ORS recommends the Commission should
2 deny Budget's application

3 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

4 A. Yes.

5

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